

Federal Acquisition Regulation

42.709-2

(ii) 10 percent of the total contract, task order, or delivery order amount;

(3) The contracting officer performs a risk assessment and determines that the use of the quick-closeout procedure is appropriate. The risk assessment shall include—

(i) Consideration of the contractor's accounting, estimating, and purchasing systems;

(ii) Other concerns of the cognizant contract auditors; and

(iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and

(4) Agreement can be reached on a reasonable estimate of allocable dollars.

(b) Determinations of final indirect costs under the quick-closeout procedure provided for by the Allowable Cost and Payment clause at 52.216-7 shall be final for the contract it covers and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.

(c) Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

[48 FR 42370, Sept. 19, 1983, as amended at 55 FR 52796, Dec. 21, 1990; 61 FR 31661, June 20, 1996; 72 FR 27385, May 15, 2007; 76 FR 31408, May 31, 2011]

42.709 Scope.

(a) This section implements 10 U.S.C. 2324 (a) through (d) and 41 U.S.C. 256 (a) through (d). It covers the assessment of penalties against contractors which include unallowable indirect costs in—

(1) Final indirect cost rate proposals; or

(2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of \$700,000, except fixed-price contracts without cost in-

centives or any firm-fixed-price contracts for the purchase of commercial items.

[60 FR 42658, Aug. 16, 1995, as amended at 69 FR 76358, Dec. 20, 2004; 71 FR 57368, Sept. 28, 2006; 75 FR 53134, Aug. 30, 2010]

42.709-1 General.

(a) The following penalties apply to contracts covered by this section:

(1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—

(i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

[60 FR 42658, Aug. 16, 1995]

42.709-2 Responsibilities.

(a) The cognizant contracting officer is responsible for—

(1) Determining whether the penalties in 42.709-1(a) should be assessed;

(2) Determining whether such penalties should be waived pursuant to 42.709-5; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—

(1) Recommending to the contracting officer which costs may be unallowable